

David J. Goldsmith
Partner

Direct: 212 612-1220
dgoldsmith@schlamstone.com

SCHLAM STONE & DOLAN LLP

26 Broadway, New York, NY 10004
Main: 212 344-5400 Fax: 212 344-7677
schlamstone.com

June 22, 2022

By ECF

Hon. Eric R. Komitee
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Diaz Cruz v. United States & Henry V. Santana*,
No. 20-CV-00891 (EK) (SJB)

Dear Judge Komitee:

We write respectfully on behalf of Defendant Henry V. Santana in opposition to Plaintiff's letter motion to strike the argument in Officer Santana's letter concerning *Egbert v. Boule*, 596 U.S. ___, No. 21-147, 2022 WL 2056291 (U.S. June 8, 2022). See ECF Nos. 57 and 58 (both filed June 22, 2022).

Contrary to Plaintiff's argument, Officer Santana's letter does not amount to a sur-reply brief in further support of his motion to dismiss. The letter does not offer argument in further reply to Plaintiff's opposition to the motion (ECF No. 48), but rather brings to the Court's attention a new and controlling decision of the U.S. Supreme Court handed down months after the close of briefing. Thus, the provision of Your Honor's Individual Practices and Rules that Plaintiff cites, requiring parties to seek leave of Court before submitting a sur-reply, is not relevant here.

Moreover, nothing in the Local Civil Rules or Your Honor's Individual Practices and Rules prohibits a party from explaining the significance of supplemental authority that Plaintiff concedes is a proper subject of a letter to the Court.

Accordingly, the Court should deny Plaintiff's motion to strike. To the extent the Court grants Plaintiff's request to submit a supplemental brief concerning *Egbert v. Boule*, Officer Santana likewise requests an opportunity to submit a supplemental brief.

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Respectfully submitted,

/s/ David J. Goldsmith

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cc: All Counsel of Record
(by ECF)